

REMARKS

Claims 19, 20, and 22-37 are currently pending in this application. Claims 1-18 and 21 have been cancelled, without prejudice. Claims 24 and 31-37 have been withdrawn by the Examiner as being drawn to a non-elected invention.

Applicants respectfully request rejoinder of claims 24 and 31-37 upon allowance of claim 19 since claims 24 and 31-36 depend directly or indirectly from claim 19.

Claim 19 has been amended, without prejudice, to include the subject matter of canceled claim 21. Claim 22 has been amended to correct the percentage of component A. This amendment is supported by original claim 4. Claims 27-29 have been amended to correct the respective amounts of *Bifidobacterium breve*. These amendments are supported at page 4, lines 4-12 of the specification.

No new matter has been added to the application by the foregoing amendments.

Claims 19-23 and 25-30 have been rejected under 35 U.S.C. §103(a) as obvious over United States Patent No. 5,895,648 to Cavaliere Vesely et al. The Office Action acknowledges that Cavaliere Vesely et al. fails to teach a composition where two non-digestible soluble carbohydrates are present together with one present in the amount of between 5 and 95 wt% by weight of the total sum of the insoluble carbohydrate components. However, the Office Action contends that Vesely et al. suggests the use of "one or more" non-digestible carbohydrate. The Office Action concludes from this that one skilled in the art would find it obvious to use multiple non-digestible carbohydrates such as galacto-oligosaccharides with insulin since there would be a reasonable expectation of success that doing so would provide a prebiotic benefit to the user.

Applicants respectfully traverse this rejection and request that the rejection be reconsidered and withdrawn.

As reiterated by the Supreme Court in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 82 U.S.P.Q.2d 1385 (2007), the framework for the objective analysis for determining obviousness under 35 U.S.C. §103 is stated in *Graham v. John Deere*. Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg., No. 195 (October 10, 2007) at page 57527

(hereinafter "Examination Guidelines"). The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

Examination Guidelines at page 57527.

Independent claim 19 relates to a preparation comprising *Bifidobacterium breve* and a mixture of at least two non-digestible soluble carbohydrate components A and B, wherein said carbohydrate component A has a different structure from said carbohydrate component B; said carbohydrate component A is present in an amount of 5 to 95% by weight of the sum of carbohydrate components A and B; at least 50% of the total non-digestible soluble carbohydrates is selected from disaccharides to eicosasaccharides; carbohydrate components A and B differ in the average number of monosaccharide units, carbohydrate component A having an average chain length which is at least 5 monosaccharide units lower than the average chain length of component B; and wherein said carbohydrate component A is selected from non-digestible monosaccharides up to hexasaccharides of the same carbohydrate structure, and said carbohydrate component B is selected from non-digestible heptasaccharides and higher polysaccharides of the same carbohydrate structure.

Cavaliere Vesely et al. fails to suggest or disclose that the two different carbohydrates also differ in chain length, as set forth in independent claim 19. Claim 19 requires that the average chain length of A and B differ by at least 5 monosaccharide units. There is no suggestion of such a property in Cavaliere Vesely et al. This aspect clearly falls outside the routine experimentation that the Office Action envisages. Supposedly it would be straightforward to arrive at an optimum weight ratio between oligosaccharides, in case one were to employ more than one, but the relevance of chain length is not suggested or disclosed by Cavaliere Vesely et al.

Also, Cavaliere Vesely et al. does not relate to infant nutrition and is not directed to stimulating the intestinal flora development in bottle-fed infants.

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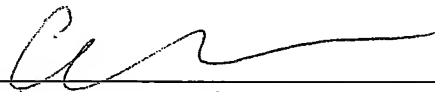
For at least the foregoing reasons, claims 19-23 and 25-30 are not obvious the disclosure of Cavaliere Vesely et al., as set forth in the Office Action. Therefore, Applicants respectfully request reconsideration and withdrawal of this rejection.

Conclusion

It is believed that any pending rejections have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Respectfully submitted,
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